



7510-13

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 19-140]

Notification Requirements Regarding Findings of Discrimination, Sexual Harassment, Other Forms of Harassment, or Sexual Assault

AGENCY: National Aeronautics and Space Administration.

ACTION: New reporting requirement for discrimination, sexual or other forms of harassment, or sexual assault; request for comments.

SUMMARY: The National Aeronautics and Space Administration (NASA) is soliciting public comment on the agency's proposed implementation of new reporting requirements regarding discrimination and harassment among recipients of NASA financial assistance. The many hundreds of U.S. institutions of higher education and other organizations that receive NASA funds are responsible for fully investigating complaints and for compliance with federal non-discrimination laws, regulations, and executive orders. The implementation of new reporting requirements is necessary as NASA seeks to help ensure research environments to which the Agency provides funding are free from discrimination, including harassment, sexual harassment, other forms of harassment, and sexual assault. Additionally, NASA is taking this action to bolster our policies, guidelines, and communications. The intended effect of this action is, first, to better ensure that organizations funded by NASA clearly understand expectations and requirements. In addition, NASA seeks to ensure that recipients of grants and cooperative agreements respond promptly and appropriately to instances of discrimination, sexual harassment, other forms of harassment, and sexual assault.

DATES: Comments must be received by [INSERT 30 DAYS FROM DATE PUBLISHED IN THE FEDERAL REGISTER].

ADDRESSES: Comments should be addressed to National Space and Aeronautics Administration Headquarters, 300 E Street S.W. Rm. 6087, Washington, DC 20546 or sent by email to civilrightsinfo@nasa.gov; Phone Number: 202-358-2180, FAX Number: 202-358-3336. We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include “*Reporting Requirement Regarding Findings of Discrimination, Sexual Harassment, other Forms of Harassment, or Sexual Assault*” in the subject line of the email message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message.

FOR FURTHER INFORMATION CONTACT: Richard N. Reback, email: civilrightsinfo@nasa.gov; telephone (202)358-2180

SUPPLEMENTARY INFORMATION: As a U.S. funding agency of scientific research and development, and the primary funding agency for aeronautics and space research and technology, NASA is committed to promoting safe, productive research and education environments for current and future scientists and engineers. We consider the Principal Investigator (PI) and any Co-I(s) identified on a NASA award and all personnel supported by a NASA award must not engage in discriminatory or harassing behavior during the award period of performance whether at the awardee institution, on-line, or outside the organization, such as at field sites or facilities, or during conferences and workshops.

Upon implementation, the new term and condition will require awardee organizations to notify NASA of any findings/determinations of discrimination, sexual harassment, other forms of harassment, or sexual assault regarding an NASA funded PI or Co-I. The new term and condition also will require the awardee to notify NASA if the PI or Co-I is placed on administrative leave or if the awardee has imposed any administrative action on the PI or any determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to discrimination, sexual harassment, other forms of harassment, or sexual assault. Finally, the award term and condition specifies the procedures that will be followed by NASA upon receipt of a notification.

The full text of the new term and condition is provided below:

Notification Requirements Regarding Sexual Harassment, Other Forms of Harassment, or Sexual Assault

The Principal Investigator (PI) and any Co-I(s) identified on an NASA award are in a position of trust. These individuals must comport themselves in a responsible and accountable manner during the award period of performance, whether at the awardee institution, on-line, or at locales such as field sites, facilities, or conferences/workshops. Above all, NASA wishes to assure the safety, integrity, and excellence of the programs and activities it funds.

For purposes of this term and condition, the following definitions apply:

Administrative Leave/Administrative Action: Any temporary/interim suspension or permanent removal of the PI or Co-I, or any administrative action imposed on the PI or Co-I by the awardee under organizational policies or codes of conduct, statutes,

regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/ administrative duties, or presence on campus.

Discrimination: Treating an individual differently or using methods of administration that have the effect of subjecting individuals to different treatment based on race, color, national origin, sex, disability or age.

Finding/Determination: The final disposition of a matter involving sexual harassment or other form of harassment under organizational policies and processes, to include the exhaustion of permissible appeals exercised by the PI or Co-I, or a conviction of a sexual offense in a criminal court of law.

Other Forms of Harassment: Non-gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

Sexual harassment: May include but is not limited to gender or sex-based harassment, unwelcome sexual attention, sexual coercion, or creating a hostile environment, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.

The awardee is required to notify NASA of: (1) Any finding/determination regarding the PI or any Co-I¹ that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to discrimination, sexual harassment, other forms of harassment, or sexual assault; and/or (2) if the PI or any Co-I is placed on administrative leave or if any

¹ If a Co-I is affiliated with a subawardee organization, the Authorized Organizational Representative of the subawardee must provide the requisite information directly to NASA, as instructed in this paragraph.

administrative action has been imposed on the PI or any Co-I by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to discrimination, sexual harassment, other forms of harassment, or sexual assault.² Such notification must be submitted by the Authorized Organizational Representative (AOR) to NASA's Office of Diversity and Equal Opportunity at *civilrightsinfo@nasa.gov* within ten business days from the date of the finding/determination, or the date of the placement of a PI or Co-I by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner.³

Each notification must include the following information:

☐ NASA Award Number;

☐ Name of PI or Co-I being reported;⁴

Type of Notification: Select one of the following:

☐ Finding/Determination that the reported individual has been found to have violated awardee policies or codes of conduct, statutes, regulations, or executive orders relating to discrimination, sexual harassment, other forms of harassment, or sexual assault;

or

² Awardee findings/determinations and placement of a PI or Co-I on administrative leave or the imposition of an administrative action must be conducted in accordance with organizational policies and processes. They also must be conducted in accordance with federal laws, regulations, and executive orders.

³ Such notification must be provided regardless of whether the behavior leading to the finding/determination, or placement on administrative leave, or the imposition of an administrative action occurred while the PI or Co-I was carrying out award activities.

⁴ Only the identification of the PI or Co-I is required. Personally identifiable information regarding any complainants or other individuals involved in the matter must not be included in the notification.

☐ Placement by the awardee of the reported individual on administrative leave or the imposition of any administrative action on the PI or any Co-I by the awardee relating to any finding/determination, or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

The awardee must also provide:

- ☐ A description of the finding/determination and action(s) taken, if any; and/or
- ☐ The reason(s) for, and conditions of placement of the PI or any Co-I on administrative action.

The awardee, at any time, may propose a substitute investigator if it determines the PI or any Co-I may not be able to carry out the funded project or activity and/or abide by the award terms and conditions.

In reviewing the notification, NASA will consider, at a minimum, the following factors:

- a. The safety and security of personnel supported by the NASA award;
- b. The overall impact to the NASA-funded activity;
- c. The continued advancement of taxpayer-funded investments in science and scientists; and
- d. Whether the awardee has taken appropriate action(s) to ensure the continuity of science and that continued progress under the funded project can be made.

Upon receipt and review of the information provided, NASA will consult with the AOR, or designee. Based on the results of this review and consultation, the Agency

may, if necessary and in accordance with 2 CFR 200.338, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any Co-I, reduce the award funding amount, or where neither of those previous options is available or adequate, to suspend or terminate the award. Other personnel supported by a NASA award must likewise remain in full compliance with awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. With regard to any personnel not in compliance, the awardee must make appropriate arrangements to ensure the safety and security of other award personnel and the continued progress of the funded project. Notification of these actions is not required under this term and condition.

End of Proposed Term and Condition

Implementation:

Upon receipt and resolution of all comments, it is NASA's intention to implement the new term through revision of the NASA Agency Specific Requirements to the Research Terms and Conditions, the Grant General Conditions, and the Cooperative Agreement—Financial and Administrative Terms and Conditions. These revised terms and conditions will become effective thirty days from the date of publication in the Federal Register and will be available in the NASA Grants and Cooperative Agreement Manual (GCAM).

The new term and condition will be applied to all new NASA awards and funding amendments to existing awards made on or after the effective date. This new reporting requirement will apply to all findings/determinations that occur on or after the effective date of the terms and conditions. With regard to notification of placement on administrative leave, the awardee must notify NASA

within seven business days from the date the awardee determines that placement on administrative leave is necessary.

Awardees are strongly encouraged to conduct a thorough review of the term and condition to determine whether the new requirements necessitate any changes to the institution's policies and procedures. The new term and condition will be effective for any new award, or funding amendment to an existing award, made on or after the effective date. For these purposes, this means that any finding/determination, placement on administrative leave or the imposition of any administrative action by the institution made on or after the start date of an award or funding amendment subject to the new term will invoke the new notification requirements.

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2019-14653 Filed: 7/9/2019 8:45 am; Publication Date: 7/10/2019]